

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Date 9-29-93

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Signature

Date:

JUN 30 1993

E.I.N.:

K.D.O.:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. Based on the information submitted, we have concluded that you do not qualify under that section.

You were incorporated under the laws of [REDACTED] on [REDACTED]. In your articles of incorporation, you stated your purpose as "Public Consumer Educational Service".

Article 2, Section 2 of your bylaws lists your specific objectives and purposes as:

- (a) To provide consumer educational information.
- (b) To educate the new car buyer concerning price, rebate and negotiation advice.
- (c) To publish a series of articles that focus on selecting, purchasing, financing and maintaining a new automobile.
- (d) To engage in other activities related to educating the public concerning consumer issues.
- (e) To conduct research and write articles to support the above activities.

Since your inception, your activities have been to educate the public on a variety of consumer issues with special attention to educating the public on how to select, price, finance, and maintain a new automobile. One of the services that you provide offers automobile invoice cost, unpublished rebate information, and negotiating advice at a fee slightly above cost. Articles have been published in house pertaining to the above subjects and distributed to public libraries and print media at no charge. Volunteer staff and paid contractors actively contribute to the research, writing, editing and production processes of these activities.

[REDACTED]

You rely on editorial articles in the print media and referrals from previous callers to publicize your services.

You state that you make a special effort to reach women, who according to the Harvard Law Review, Feb. 1991, are "targeted by the sales process and pay significantly higher prices for new cars".

You provide your services through the use of a "900" number. There is no charge for the first minute, however, each additional minute is \$[REDACTED]. Since your average call takes about five minutes, the typical call costs approximately \$[REDACTED]. This appears to be your sole source of revenue.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(b)(4) of the Income Tax Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. It further provides that an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational", as used in section 501(c)(3), relates to, (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b), The instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business... An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes....

Section 513 of the Code defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501, with certain exceptions not here relevant.

Section 1.513-1(b) of the regulations provides that the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services. It is further provided that activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identity as trade or business merely because they are carried on within a larger complex of other endeavors which may, or may not be related to the exempt purpose of the organization.

In B.S.W. Group, Inc. v. Comm., 70 T.C. 352 (1978), an organization's sole activity was to offer consulting services for a fee to non-profit, limited resource organizations engaged in various rural-related activities. The court held that the Group's primary purpose was commercial, and therefore, it did not qualify for exemption.

"The court reasoned that under the operational test, the purpose towards which an organization's activities are directed and not the nature of the activities themselves, is ultimately dispositive of the organization's right to be classified as a section 501(c)(3) organization exempt from tax under section 501(a)... Petitioner is engaged in one and only one activity, but it is possible for such an activity to be carried on for more than

one purpose... The fact that petitioner's activity may constitute a trade or business does not, of itself, disqualify it from classification under section 501(c)(3), provided the activity furthers or accomplishes an exempt purpose... Rather, the critical inquiry is whether petitioner's primary purpose for engaging in its sole activity is an exempt purpose, or whether its primary purpose is the nonexempt one of operating a commercial business producing net profits for petitioners..."

Rev. Rul. 60-351, 1960-2 C.B. 169 discussed an organization organized and operated on a non-profit basis. The organization published a foreign language magazine containing fiction, poetry, book reviews and articles alleged to be of literary, scientific and educational character. The magazine was made available to the general public through regular paid subscriptions. The ruling held that since the sole activity of the corporation was the publishing and public sale of a magazine it was not exempt from federal income tax under section 501(c)(3).

Rev. Rul. 67-4, 1967-1 C.B. 121, provides that the publication of printed material may be educational if:

- (a) the content of the publication is educational,
- (b) the preparation of the material follows methods generally accepted as "educational" in character,
- (c) the distribution of the material is necessary or valuable in achieving the organization's educational and scientific purposes, and
- (d) the manner in which the distribution is accomplished is distinguishable from ordinary commercial publishing practices.

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Better Business Bureau V. United States, 326 U.S. 278 (1945); Stevens Bros. Foundation, Inc. v. Commissioner, 324 F.2d 633 (8th Cir. 1963), aff'g. 39 T.C. 93 (1962), Cert. denied, 376 U.S. 969 (1964). Operating for the benefit of private parties who are not members of a charitable class constitutes such a substantial nonexempt purpose. Old Dominion Box Co., Inc. v. United States, 477 F.2d 340 (4th Cir. 1973), cert. denied, 413 U.S. 910 (1973).

[REDACTED]

To qualify for exemption under section 501(c)(3) of the Code, you must establish that you are organized and operated exclusively for religious, charitable, or educational purposes and that no part of your net earnings inure to the benefit of a private individual or shareholder. Your articles of incorporation do not satisfy the organizational test of section 501(c)(3) because they do not describe purposes listed in that section, nor do they provide for disposition of your assets for exclusively charitable purposes upon your dissolution. These organizational deficiencies may be overcome by amending your charter, which you have expressed a willingness to do if necessary.

An exempt organization's activities which are conducted in a manner similar to commercial undertakings constitute unrelated trade or business as defined in section 513 of the Code, and the income derived therefrom is taxable. See Rev. Rul. 55-676, 1955-2 C.B. 266. The Ruling stated that "a trade or business not otherwise related does not become substantially related to an organization's exempt purpose merely because incidental use is made of the trade or business in order to further the exempt purpose. A trade or business is considered related if operated primarily as an integral part of your educational activities, but is considered unrelated if operated in substantially the same manner as a commercial operation."

Where the dissemination of published material has the characteristics of a trade or business, it is not in furtherance of an exempt purpose. Your use of the "900" number to provide information to new car buyers is an activity engaged in for the production of income from the sale of goods and the performance of services. This inherently commercial activity does not lose its identity as such merely because the service or information provided may be educational in nature. In this regard, your primary activity cannot be distinguished from other commercial providers of services and information utilizing the "900" media. Like the organization discussed in Rev. Ruls. 60-351 and 67-4, supra, you are engaged in a trade or business rather than an educational activity. See also Rev. Rul. 77-4, 1977-1 C.B. 141.

Because you are presently organized for the benefit of private individuals, and because your primary activity constitutes a trade or business not related to any exempt purpose, we have concluded that you are not organized, nor are you operated exclusively for charitable or educational purposes within the meaning of section 501(c)(3) of the Code. We therefore, can not recognize you as exempt under that section.

Contributions to you are not deductible under section 170 of the Code.

You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the U.S. Court of Federal Claims or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

Chief, Exempt Organizations
Rulings Branch 3